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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,492	08/25/2003	Scott D. Raches	P06038US0	2378
27139	7590	09/22/2005	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. ATTN: MAYTAG 801 GRAND AVENUE, SUITE 3200 DES MOINES, IA 50309-2721			PERRIN, JOSEPH L	
		ART UNIT	PAPER NUMBER	
		1746		

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/647,492	RACHES ET AL.	
	Examiner	Art Unit	
	Joseph L. Perrin, PhD	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. In view of applicant's amendment to claim 7, the rejection under 35 USC §112, second paragraph has been withdrawn.
2. Applicant's arguments filed 18 July 2005 have been fully considered but they are not persuasive.
3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, DINGLER is cited for teaching the claimed dishwasher with the exception of DINGLER disclosing two racks as opposed to applicant's claimed dishwasher with three racks. The Examiner takes the position that it is within the level and knowledge of ordinary skill in the art to duplicate the rollably supported racks of DINGLER from two racks to three racks since the courts have held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. The Examiner's recitation of secondary references disclosing the known concept of three racks evidences this position.

4. In response to applicant's arguments that "several of the references teach away from a third rack mounted in the dishwasher cabinet", this is not persuasive because the secondary references, particularly cited for showing the known concept of providing a dishwasher with a third rack, clearly teach the concept of providing a dishwasher with a third rack is known. Furthermore, even if, *arguendo*, one were to consider such as teaching away, it is noted that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.

W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Moreover, applicant's argument that "the German patent teaches away from the asserted combination, since silverware baskets are provided in the upper and lower rack", this is not persuasive for at least reasons indicated above. It is further noted that applicant's claims are directed to more than one silverware basket.

5. In response to applicant's argument that DINGLER discloses a screw and flanged button and not the claimed hook, this is not persuasive because one of ordinary skill in the art would at once envisage the functionality of the screw and flanged button as a hooking means which anticipates applicant's claims. It is noted that such conventional attaching means are not considered a point of novelty in the claimed invention.

6. In response to applicant's arguments that the DINGLER basket precludes the roll out of a lower rack, this is not persuasive because Figure 1 does not show the alleged

preclusion. The position is taken that the basket of DINGLER is fully capable of overlying the basket as claimed by applicant.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 1-2, 6, 8-9, 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,069,360 to DINGLER *et al.* (hereinafter "DINGLER") in view of U.S. Patent No. 3,837,917 to JENKINS *et al.* or U.S. Patent No. 3,861,769 to JENKINS or U.S. Patent Publication No. 2003/0037809 to FAVARO or U.S. Patent No. 6,622,740 to DURAZZANI or DE 2960887. Re claim 1, DINGLER discloses a dishwasher (10) having a cabinet (12), a pivotal door (14), extendible/retractable racks (24) and a silverware basket (20) removably attachable to the door (see Figures 1-3 and relative associated text). Re claims 2, 9 & 16, since the basket disclosed by DINGLER has tapered openings (66) for attaching to the dishwasher door the position is taken that the door inherently must include a connecting means such as a hook or an equivalent thereof for securely attaching to the tapered opening of the basket. Re claims 6, 13 & 15, the dividers (50/64) create multiple compartments which read on multiple baskets positioned side-by-side on the door. Re claim 8, DINGLER further discloses the door being recessed in the basket connecting area (see Figure 1). Re claim 12, DINGLER further discloses an upwardly extending

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handle (64). DINGLER discloses using two removable racks but does not expressly disclose using three racks. However, JENKINS *et al.*, JENKINS, FAVARO, DURAZZANI and DE 2960887 each disclose conventional three rack dishwashers. The position is taken that it would have been obvious for a person of ordinary skill in the art at the time the invention was made to use three racks versus two racks since duplicating the racks would advantageously increase the wash load. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Re applicant's claims to plural and separate baskets, as noted above, DINGLER discloses a silverware basket with multiple compartments that read on a plurality of baskets. Although DINGLER discloses plural silverware compartments, DINGLER does not expressly disclose plural, separate baskets. The position is taken that it would have been obvious for a person of ordinary skill in the art at the time the invention was made to use two separate baskets which form separate compartments in place of one basket forming plural compartments since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, it would have been obvious to duplicate the number of baskets since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Claims 3-5, 7 & 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over DINGLER in view of JENKINS *et al.* or JENKINS or FAVARO or DURAZZANI or DE 2960887 as applied to claims 1-2, 6, 8-9, 12-16 above, and further in view of U.S.

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Patent No. 5,431,294 to STOTTMANN *et al.* (hereinafter "STOTTMANN"). Recitation of the previous rejection is repeated here from above. However, the previous references do not expressly disclose a removable, pivotal cover attached to the basket.

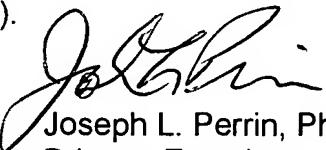
STOTTMAN teaches that it is known to provide a silverware basket with a removable, pivotal cover (65) to form a washing chamber/compartment which "conveniently can be used to wash small light items" in the closed position and "conveniently may be sized to accept items like the blades of cooking knives" in the open or detached position (see entire reference of STOTTMANN, for instance, col. 4, lines 42-63). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to provide a silverware basket with a removable/pivotal cover for the purpose of advantageously washing a broad range of items of different sizes and shapes.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: DE 19960496 & JP 10-180212, which disclose conventional dishwashers with at least three rollably supported racks.
11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, PhD whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.
14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph L. Perrin, PhD
Primary Examiner
Art Unit 1746

jlp